

Senate Bill No. 109

Passed the Senate August 27, 2009

Secretary of the Senate

Passed the Assembly August 20, 2009

Chief Clerk of the Assembly

This bill was received by the Governor this _____ day
of _____, 2009, at _____ o'clock ____M.

Private Secretary of the Governor

CHAPTER _____

An act to amend Sections 1812.601 and 1812.607 of the Civil Code, relating to auctioneers.

LEGISLATIVE COUNSEL'S DIGEST

SB 109, Calderon. Auctioneers: real estate.

(1) Existing law regulates the activities of auctioneers and auction companies and requires that they maintain a bond issued by a surety company admitted in this state or an equivalent deposit. Existing law defines auction in this regard and excepts from this definition a sale of real estate or a sale of real estate with personal property or fixtures or both in a unified sale, as specified. Existing law requires auctioneers and auction companies to post or distribute to the audience the terms, conditions, restrictions, and procedures under which goods will be sold at the auction. A violation of certain of these provisions is punishable by specified fines, and a violation of these provisions generally is a misdemeanor.

This bill would remove the exception provided for real estate from the definition of auction for the purposes described above, thereby bringing real property auctions within those provisions, with specified exceptions. The bill would require an auction company and auctioneer to post or distribute to the audience a description of all fees, both refundable and nonrefundable, that will be levied on bidders, as well as any changes to those fees. With respect to auctions of real property auctioned with reserve, the bill would require an auction company and auctioneer to post or distribute to the audience a clear explanation of the terms “auctioned with reserve” and “sale subject to seller confirmation, approval, or acceptance,” and the procedures and timelines to be used in connection with sales that are subject to these requirements. A violation of these provisions would be subject to specified fines. The bill would establish requirements for the return of fees and deposits by auctioneers for auctions of real property auctioned subject to confirmation, approval, or acceptance by a seller, beneficiary, or mortgagee. By changing the definition of a crime, the bill would impose a state-mandated local program.

(2) The California Constitution requires the state to reimburse local agencies and school districts for certain costs mandated by the state. Statutory provisions establish procedures for making that reimbursement.

This bill would provide that no reimbursement is required by this act for a specified reason.

The people of the State of California do enact as follows:

SECTION 1. Section 1812.601 of the Civil Code is amended to read:

1812.601. (a) “Advertisement” means any of the following:

(1) Any written or printed communication for the purpose of soliciting, describing, or offering to act as an auctioneer or provide auction company services, including any brochure, pamphlet, newspaper, periodical, or publication.

(2) A telephone or other directory listing caused or permitted by an auctioneer or auction company to be published that indicates the offer to practice auctioneering or auction company services.

(3) A radio, television, or similar airwave transmission that solicits or offers the practice of auctioneering or auction company services.

(b) “Auction” means a sale transaction conducted by means of oral or written exchanges, which include exchanges made in person or through electronic media, between an auctioneer and the members of his or her audience, which exchanges consist of a series of invitations for offers for the purchase of goods made by the auctioneer and offers to purchase made by members of the audience and culminate in the acceptance by the auctioneer of the highest or most favorable offer made by a member of the participating audience. However, auction does not include any of the following:

(1) A wholesale motor vehicle auction subject to regulation by the Department of Motor Vehicles.

(2) A sale of real property pursuant to a nonjudicial foreclosure governed by Article 1 (commencing with Section 2920) of Chapter 2 of Title 14 of Part 4.

(3) A sale of real property pursuant to a judicial foreclosure governed by Article 6 (commencing with Section 701.510) of

Chapter 3 of Division 2 of Title 9 of Part 2 of the Code of Civil Procedure.

(4) A sale conducted pursuant to Section 9604 of the Commercial Code, if an obligation secured by a security interest in personal property or fixtures is also secured by an interest or an estate in real property.

(c) “Auction company” means any person who arranges, manages, sponsors, advertises, accounts for the proceeds of, or carries out auction sales at locations, including, but not limited to, any fixed location, including an auction barn, gallery place of business, sale barn, sale yard, sale pavilion, and the contiguous surroundings of each.

(d) “Auctioneer” means any individual who is engaged in, or who by advertising or otherwise holds himself or herself out as being available to engage in, the calling for, the recognition of, and the acceptance of, offers for the purchase of goods at an auction.

(e) “Employee” means an individual who works for an employer, is listed on the employer’s payroll records, and is under the employer’s control.

(f) “Employer” means a person who employs an individual for wages or salary, lists the individual on the person’s payroll records, and withholds legally required deductions and contributions.

(g) “Goods” means any goods, wares, chattels, merchandise, or other personal property, including domestic animals and farm products, or real property.

(h) “Person” means an individual, corporation, partnership, trust, including a business trust, firm, association, organization, or any other form of business enterprise.

SEC. 2. Section 1812.607 of the Civil Code is amended to read:

1812.607. Every auction company and auctioneer shall do all of the following:

(a) Disclose his or her name, trade or business name, telephone number, and bond number in all advertising of auctions. A first violation of this subdivision is an infraction subject to a fine of fifty dollars (\$50); a second violation is subject to a fine of seventy-five dollars (\$75); and a third or subsequent violation is subject to a fine of one hundred dollars (\$100). This section shall

not apply to business cards, business stationery, or to any advertisement that does not specify an auction date.

(b) Post a sign, the dimensions of which shall be at least 18 inches by 24 inches, at the main entrance to each auction, stating that the auction is being conducted in compliance with Section 2328 of the Commercial Code, Section 535 of the Penal Code, and provisions of the Civil Code. If the auction is conducted through electronic media, the auctioneer may satisfy this requirement by requiring any person who wishes to bid to acknowledge electronically that the auction is being conducted in compliance with Section 2328 of the Commercial Code, Section 535 of the Penal Code, and provisions of the Civil Code, before being allowed to bid. A first violation of this subdivision is an infraction subject to a fine of fifty dollars (\$50); a second violation is subject to a fine of seventy-five dollars (\$75); and a third or subsequent violation is subject to a fine of one hundred dollars (\$100).

(c) (1) Post or distribute to the audience the terms, conditions, restrictions, and procedures whereby goods will be sold at the auction, and a description of all fees, both refundable and nonrefundable, that will be levied as a condition of bidding, and announce any changes to those terms, conditions, restrictions, procedures, and fees prior to the beginning of the auction sale.

(2) With respect to auctions of real property, during which one or more properties will be auctioned with reserve, post or distribute to the audience a clear explanation of the terms “auctioned with reserve” and “sale subject to seller confirmation, approval, or acceptance,” and the procedures and timelines to be used in connection with sales that are subject to these requirements.

(3) A first violation of this subdivision is an infraction subject to a fine of fifty dollars (\$50); a second violation is subject to a fine of one hundred dollars (\$100); and a third or subsequent violation is subject to a fine of two hundred fifty dollars (\$250).

(d) Notify the Secretary of State of any change in address of record within 30 days of the change. A violation of this subdivision is an infraction subject to a fine of fifty dollars (\$50).

(e) Notify the Secretary of State of any change in the officers of a corporate license within 30 days of the change. A violation of this subdivision is an infraction subject to a fine of fifty dollars (\$50).

(f) Notify the Secretary of State of any change in the business or trade name of the auctioneer or auction company within 30 days of the change. A violation of this subdivision is an infraction subject to a fine of fifty dollars (\$50).

(g) Keep and maintain, at the auctioneer's or auction company's address of record, complete and correct records and accounts pertaining to the auctioneer's or auction company's activity for a period of not less than two years. The records shall include the name and address of the owner or consignor and of any buyer of goods at any auction sale engaged in or conducted by the auctioneer or auction company, a description of the goods, the terms and conditions of the acceptance and sale of the goods, all written contracts with owners and consignors, and accounts of all moneys received and paid out, whether on the auctioneer's or auction company's own behalf or as agent, as a result of those activities. A first violation of this subdivision is a misdemeanor subject to a fine of five hundred dollars (\$500); and a second or subsequent violation is subject to a fine of one thousand dollars (\$1,000).

(h) Within 30 working days after the sale transaction, provide, or cause to be provided, an account to the owner or consignor of all goods that are the subject of an auction engaged in or conducted by the auctioneer or auction company. A first violation of this subdivision is a misdemeanor subject to a fine of five hundred dollars (\$500); and a second or subsequent violation is subject to a fine of one thousand dollars (\$1,000).

(i) Within 30 working days after a sale transaction of goods, pay or cause to be paid all moneys and proceeds due to the owner or the consignor of all goods that were the subject of an auction engaged in or conducted by the auctioneer or auction company, unless delay is compelled by legal proceedings or the inability of the auctioneer or auction company, through no fault of his or her own, to transfer title to the goods or to comply with any provision of this chapter, the Commercial Code, or the Code of Civil Procedure, or with any other applicable provision of law. A first violation of this subdivision is a misdemeanor subject to a fine of one thousand dollars (\$1,000); a second violation is subject to a fine of one thousand five hundred dollars (\$1,500); and a third or subsequent violation is subject to a fine of two thousand dollars (\$2,000).

(j) Maintain the funds of all owners, consignors, buyers, and other clients and customers separate from his or her personal funds and accounts. A violation of this subdivision is an infraction subject to a fine of two hundred fifty dollars (\$250).

(k) Immediately prior to offering any item for sale, disclose to the audience the existence and amount of any liens or other encumbrances on the item, unless the item is sold as free and clear. For the purposes of this subdivision, an item is “free and clear” if all liens and encumbrances on the item are to be paid prior to the transfer of title. A violation of this subdivision is an infraction subject to a fine of two hundred fifty dollars (\$250) in addition to the requirement that the buyer be refunded, upon demand, the amount paid for any item that is the subject of the violation.

(l) (1) Except as provided in paragraphs (2) and (3), within two working days after an auction sale, return the blank check or deposit of each buyer who did not purchase goods at the sale.

(2) After an auction sale of real property sold subject to seller confirmation, approval, or acceptance, within five working days after the high bidder’s offer is rejected, or within 15 working days after the high bidder’s offer is made and the seller fails to respond to the offer, return, or cause to be returned, all deposits and fees collected from the bidder in connection with the auction. An auction company or auctioneer may satisfy the requirements of this paragraph by depositing escrow instructions with the escrow agent that direct the escrow agent to return all funds placed on deposit by the bidder with that agent. An auction company may act as the agent of the seller for this purpose.

(3) After an auction sale of real property sold subject to beneficiary or mortgagee confirmation, approval, or acceptance, if the property is proposed to be sold for less than the full amount owed the beneficiary or mortgagee, within five working days after the high bidder’s offer is rejected by the beneficiary or mortgagee, or within five working days after a request by the high bidder, if the beneficiary or mortgagee fails to respond to the offer and more than 15 working days have passed since the date of the auction, return, or cause to be returned, all deposits and fees collected from the bidder in connection with the auction. An auction company or auctioneer may satisfy the requirements of this paragraph by depositing escrow instructions with the escrow agent that direct the escrow agent to return all funds placed on deposit by the bidder

with that agent. An auction company may act as the agent of the beneficiary or mortgagee for this purpose.

(4) A first violation of this subdivision is an infraction subject to a fine of one hundred dollars (\$100); and a second or subsequent violation is subject to a fine of two hundred fifty dollars (\$250).

(m) Within 30 working days of any auction sale, refund that portion of the deposit of each buyer that exceeds the cost of the goods purchased, unless delay is compelled by legal proceedings or the inability of the auctioneer or auction company, through no fault of his or her own, to transfer title to the goods or to comply with any provision of this chapter, the Commercial Code, or the Code of Civil Procedure, or with other applicable provisions of law, or unless the buyer violated the terms of a written agreement that he or she take possession of purchased goods within a specified period of time. A first violation of this subdivision is an infraction subject to a fine of one hundred dollars (\$100); and a second or subsequent violation is subject to a fine of two hundred fifty dollars (\$250).

SEC. 3. No reimbursement is required by this act pursuant to Section 6 of Article XIII B of the California Constitution because the only costs that may be incurred by a local agency or school district will be incurred because this act creates a new crime or infraction, eliminates a crime or infraction, or changes the penalty for a crime or infraction, within the meaning of Section 17556 of the Government Code, or changes the definition of a crime within the meaning of Section 6 of Article XIII B of the California Constitution.

Approved _____, 2009

Governor